

No. 13-0750 BN

1. On May 4, 2005, Holcomb received an associate's degree in nursing from Okaloosa-Walton Community College in Niceville, Florida.



2. On July 14, 2005, Holcomb first applied for licensure as an RN.
3. On September 12, 2005, the Board approved Holcomb's application to sit for the registered nurse licensure examination administered by the National Council of State Boards of Nursing ("NCLEX").
4. Holcomb sat for the NCLEX on September 29, 2005, but did not achieve a passing score.
5. On March 2, 2006, Holcomb applied to repeat the NCLEX. After the Board deemed her eligible, she repeated the exam on March 30, 2006, but did not achieve a passing score.
6. On May 23, 2006, Holcomb applied to repeat the NCLEX. After the Board deemed her eligible, she repeated the exam on July 18, 2006, but did not achieve a passing score.
7. After submitting her May, 23, 2006 application, but before submitting her next application to repeat the NCLEX, Holcomb pled guilty to several criminal offenses in Missouri and Illinois, the details of which are as follows:
  - a. On November 28, 2006, in the Municipal Court for the City of Poplar Bluff, Missouri, Holcomb entered a plea of guilty to the charge of driving while intoxicated. In connection with this offense, she received a suspended imposition of sentence contingent upon satisfactory completion of 24 months' probation;
  - b. On October 25, 2007, in the 42<sup>nd</sup> Judicial Circuit (Wayne County) Court, Missouri, Holcomb entered a plea of guilty to a misdemeanor charge of passing a bad check in violation of § 570.120.<sup>1</sup> Holcomb received a suspended imposition of sentence and was placed on supervised probation for a period of 365 days;

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<sup>1</sup> Statutory references are to RSMo Supp. 2013 unless otherwise noted.



- c. On December 27, 2007, in the 36<sup>th</sup> Judicial Circuit (Butler County) Court, Missouri, Holcomb entered a plea of guilty to a misdemeanor charge of passing a bad check in violation of § 570.120. Holcomb received a suspended imposition of sentence and was placed on supervised probation for two years and was ordered to make restitution;
  - d. On February 19, 2008, in the 37<sup>th</sup> Judicial Circuit (Carter County) Court, Missouri, Holcomb entered a plea of guilty to a misdemeanor charge of passing a bad check in violation of § 570.120. Holcomb received a suspended imposition of sentence and was placed on probation for 12 months, the first six of which were to be supervised;
  - e. On September 22, 2010, in the Circuit Court of St. Clair County, Illinois, Holcomb entered a plea of guilty to a class 3 felony charge of forgery in violation of 720 ILCS 5/17-3(a)(2) and was placed on probation for a period of 18 months;
  - f. On May 12, 2011, in the 36<sup>th</sup> Judicial Circuit (Butler County) Court, Missouri, after originally being charged with driving while intoxicated, Holcomb entered a plea of guilty to an amended misdemeanor charge of driving in a careless and imprudent manner and was sentenced to pay a fine.
- 8. On November 11, 2012, Holcomb again applied to repeat the NCLEX.
  - 9. On January 16, 2013, after examining Holcomb's application, along with her supplemental statements and court records, the Board issued an order granting Holcomb the right to sit for the NCLEX. This order became effective on the date the Board received information from NCLEX of Holcomb's passing score.<sup>2</sup>

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<sup>2</sup> The Board's customary procedure is to order that a probated license issue upon passage of the exam.



10. On April 10, 2013, the Board received information from NCLEX of Holcomb's passing score, and the Board issued Holcomb a license to practice as an RN, subject to probation for a period of two years with specific terms and conditions.

11. At the time of the hearing, Holcomb had paid all fines, completed her probation, and made all restitution in association with the aforementioned guilty pleas.

### **Conclusions of Law**

We have jurisdiction to hear this complaint.<sup>3</sup> The applicant has the burden to show that he or she is entitled to licensure.<sup>4</sup> The Board has the burden of proving the existence of the basis for imposing probation on the license.<sup>5</sup> We decide the issue that was before the Board, which is the application.<sup>6</sup> We exercise the same authority that has been granted to the Board.<sup>7</sup> Therefore, we simply decide the application *de novo*.<sup>8</sup>

In its answer, the Board asserts there is cause to deny Holcomb a license under § 335.046.1<sup>9</sup> and § 335.066.1 and .2(2).

Section 335.046.1 provides that "[t]he applicant shall be of good moral character[.]" The Board contends that Holcomb does not meet this requirement for licensure. Additionally, it is the Board's contention that Holcomb's conduct and resulting criminal record constitute grounds for discipline of her license under §335.066.1 and .2(2).

Section 335.066 provides:

1. The board may refuse to issue or reinstate any certificate of registration or authority, permit or license required pursuant to chapter 335 for one or any combination of causes stated in subsection 2 of this section or the board may, as a condition to

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<sup>3</sup> Section 621.045.

<sup>4</sup> Section 621.120, RSMo 2000.

<sup>5</sup> Section 324.038.

<sup>6</sup> *Department of Soc. Servs. v. Mellas*, 220 S.W.3d 778 (Mo.App. W.D. 2007).

<sup>7</sup> *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20 (Mo. banc 1990).

<sup>8</sup> *State Bd. of Regis'n. for the Healing Arts v. Finch*, 514 S.W.2d 608, 614 (Mo.App. K.C.D. 1974).

<sup>9</sup> RSMo 2000.



issuing or reinstating any such permit or license, require a person to submit himself or herself for identification, intervention, treatment, or rehabilitation by the impaired nurse program as provided in section 335.067. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit or license required by sections 335.011 to 335.096 or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

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(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution pursuant to the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated pursuant to sections 335.011 to 335.096, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed[.]

Rather than deny Holcomb a license, the Board may issue Holcomb a license subject to probation under § 324.038.1, which provides:

Whenever a board within or assigned to the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.



## I. Guilty Pleas

An essential element of a criminal offense is one that must be proven for a conviction in every case.<sup>10</sup> The Board contends that Holcomb's offenses of passing bad checks and the forgery offense each have the essential element of fraud or dishonesty.

Fraud is an intentional perversion of truth to induce another, in reliance on it, to part with some valuable thing belonging to him.<sup>11</sup> It necessarily includes dishonesty, which is a lack of integrity or a disposition to defraud or deceive.<sup>12</sup>

In each of the Missouri cases in which Holcomb was prosecuted for passing bad checks, she pled guilty to violating § 570.120. Section 570.120.1 states as follows:

A person commits the crime of passing a bad check when:

(1) With purpose to defraud, the person makes, issues or passes a check or other similar sight order or any other form of presentment involving the transmission of account information for the payment of money, knowing that it will not be paid by the drawee, or that there is no such drawee; or

(2) The person makes, issues, or passes a check or other similar sight order or any other form of presentment involving the transmission of account information for the payment of money, knowing that there are insufficient funds in or on deposit with that account for the payment of such check, sight order, or other form of presentment involving the transmission of account information in full and all other checks, sight orders, or other forms of presentment involving the transmission of account information upon such funds then outstanding, or that there is no such account or no drawee and fails to pay the check or sight order or other form of presentment involving the transmission of account information within ten days after receiving actual notice in writing that it has not been paid because of insufficient funds or credit with the drawee or because there is no such drawee.

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<sup>10</sup> *State ex rel. Atkins v. Missouri Bd. of Accountancy*, 351 S.W.2d 483, 485 (Mo. App. K.C.D. 1961).

<sup>11</sup> *State ex rel. Williams v. Purl*, 128 S.W. 196, 201 (Mo. 1910).

<sup>12</sup> MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 359 (11<sup>th</sup> ed. 2004).



Passing bad checks requires either a purpose to defraud or the knowledge that there are insufficient funds when writing a check. A purpose to defraud is self-evident of fraud and dishonesty. Writing a check with knowledge that there are insufficient funds is a perversion of the truth that misleads the payee into believing there are sufficient funds, which is essentially a disposition to defraud. Therefore, both possible elements of this crime require a disposition to defraud. We find that the crime of passing bad checks contains the essential elements of fraud and dishonesty.

In addition to pleading guilty to bad check misdemeanors in Missouri, Holcomb pled guilty to a felony charge of forgery in the state of Illinois in violation of 720 ILCS 5/17-3(a)(2). Under 720 ILCS 5/17-3(a)(2),<sup>13</sup> the essential elements of the crime of forgery are set forth follows:

(a) A person commits forgery when, with intent to defraud, he or she knowingly:

(1) makes a false document or alters any document to make it false and that document is apparently capable of defrauding another; or

(2) issues or delivers such document knowing it to have been thus made or altered[.]

Similar to the Missouri statute defining the crime of passing a bad check, this Illinois statute describes forgery as including the intent to defraud; therefore, it likewise includes the essential element of fraud. Thus, there is ample cause for the Board to deny Holcomb a license on the basis that she has pled guilty, in four separate criminal prosecutions, to offenses having an essential element of fraud.

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<sup>13</sup> West 2006.



## II. Good Moral Character

Section 335.046.1 requires an applicant for a nursing license to be of good moral character. “Good moral character” is honesty, fairness, and respect for the rights of others and for the laws of the state and nation.<sup>14</sup> Holcomb pled guilty to the crimes of passing bad checks and forgery.

Section 314.200<sup>15</sup> states:

No board or other agency created pursuant to laws of the state of Missouri, or by any city, county or other political subdivision of the state, for the purpose of licensing applicants for occupations and professions may deny a license to an applicant primarily upon the basis that a felony or misdemeanor conviction of the applicant precludes the applicant from demonstrating good moral character, where the conviction resulted in the applicant’s incarceration, and the applicant has been released by pardon, parole or otherwise from such incarceration, or resulted in the applicant being placed on probation and there is no evidence the applicant has violated the conditions of his probation. The board or other agency may consider the conviction as some evidence of an absence of good moral character, but shall also consider the nature of the crime committed in relation to the license which the applicant seeks, the date of the conviction, the conduct of the applicant since the date of the conviction and other evidence as to the applicant’s character.

The crimes of forgery and passing a bad check demonstrate a lack of respect for the rights of others and for the law, but we are mindful that Holcomb’s record reflects only one conviction for forgery and no convictions for passing bad checks.<sup>16</sup> Her court records disclose that she has successfully completed all terms of probation, suggesting some level of rehabilitation allowing her to meet the threshold character requirement for licensure.

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<sup>14</sup> *Hernandez v. State Bd. of Regis’n. for the Healing Arts*, 936 S.W.2d 894, 899 n.1 (Mo.App. W.D. 1997).

<sup>15</sup> RSMo 2000.

<sup>16</sup> A criminal prosecution ending with a suspended imposition of sentence does not result in a conviction. See *Yale v. City of Independence*, 846 S.W.2d 193, 194 (Mo. banc 1993).



### III. Our Discretion

Holcomb asserts that her probationary status has substantially limited her ability to find a position as an RN and that the Board's terms and conditions impose a financial hardship. She asks us to use our discretion and issue her a license free of probation. The Board, on the other hand, is charged with protecting the public and asks us to uphold its probation. We must weigh the Board's responsibility against Holcomb's alleged hardship. We note that, at the time of the hearing, Holcomb was employed as an RN. While Holcomb contends that her past conduct and criminal prosecutions were the result of her bad decisions and that she is now committed to making better choices, the number of prosecutions that Holcomb faced over a relatively short period of time and in relatively rapid succession, strongly suggests that monitoring by the Board is an appropriate measure to protect the public.

### **Summary**

We grant Holcomb an RN license, subject to the terms of probation set forth by the Board.

SO ORDERED on April 15, 2014.

\s\ Sreenivasa Rao Dandamudi  
SREENIVASA RAO DANDAMUDI  
Commissioner